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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 1.11.2004

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE N.KANNADASAN

Writ Appeal No.93 of 2001

Mrs.V.Chandrakanth .. Appellant/Petitioner

Vs

1. State of Tamil Nadu
   Department of Housing
   and Urban Development
   rep. by its Secretary
   Fort St.George
   Chennai - 9.

2. The Chairman
   Tamilnadu Housing Board
   Nandanam
   Chennai - 600 035. .. Respondents

PRAYER: Appeal under Clause 15 of the Letters Patent seeking to set aside the order dated 10.12.1999 passed in W.P.No.3334 of 1996.

For Appellant : Mr.M.Vaidyanathan

For Respondents: Mr.P.Rathinavel (GA)
for 1st respondent
Mr.Kasikumar
for Mr.D.Veerasekaran
for 2nd respondent

JUDGMENT

(Judgment of this Court was made by P.D.DINAKARAN,J.)

This appeal is directed against the order dated 10.12.1999 made in W.P.No.3334 of 1996.

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2. For the purpose of convenience we will refer to the parties as arrayed in the writ petition.

3.1. The petitioner purchased land of an extent of 32 cents located in Survey No.188/5, Thiruvanmayur Village under a registered document bearing No.191/*1974, dated 31.7.1974 and also obtained a patta in her favour on 16.11.1974 and her name was entered in the revenue records. Concededly, it was only thereafter, namely on 19.2.1975, the said land was proposed to be acquired for a Housing Scheme by issuing a notification under Section 4(1) of the Land Acquisition Act (for brevity "the Act").

3.2. The said notification issued under Section 4(1) of the Act dated 19.2.1975 was challenged by the petitioner's father-in-law in W.P.No.9484 of 1983 and the Division Bench of this Court, by order dated 24.4.1991, quashed the said notification issued under Section 4(1) of the Act, finding that the said notification is vague.

3.3. Against the said order dated 24.4.1991, the State preferred an appeal before the Apex Court in SLP (Civil) No. 13725 of 1992. While disposing a batch of S.L.Ps. along with the SLP (Civil) No.13725 of 1992, referred to above, on the point whether the notification under Section 4(1) of the Act can be interfered with on the question of vagueness, the Apex Court in *State of Tamil Nadu v. L.Krishnan, AIR 1996 SC 497* held that the notification under Section 4(1) of the Act could not be interfered with on the ground of vagueness.

3.4. At the stage when award proceedings were initiated, the petitioner herself challenged the declaration made under Section 6 of the Act in the present writ petition, viz., W.P.No.3334 of 1996, on the ground that even though the petitioner is the owner of the land from 31.7.1974 and patta was issued in her favour on 16.11.1974 by the competent revenue authorities, she had never been served with any notice either under Section 4(1) of the Act or under Section 5-A or under Section 6 of the Act.

3.5. In the counter affidavit filed in the writ petition, the respondents, while traversing the said allegation of the petitioner that she is the owner of the impugned land and no notice under Sections 4(1) or Section 5-A or Section 6 were served on the petitioner, stated as follows:

> "The details of pattadhar in the Revenue records have been gathered in respect of all the fields covered in the notification, which is a time consuming process. *The pattadhar once gathered could not be verified again and*

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again for the purpose of confirming any change in the revenue register. The details of pattadhar are gathered and notified to identify the person having an interest over the property without regard to the actual title conferring absolute right on a person over the land which is being determined subsequently after the notification under Section 4(1) and Draft declaration under Section 6 of the Act, during Sections 5(A) and 9(3) and 10 enquiry. *The title holder is entitled to file objection against acquisition, after the publication of 4(1) notification*. In the instant case, the 4(1) notification has been published in the name of one Tmt.Ranganayakiammal, who was having patta at the time of enumeration of details regarding the patta holder for submitting proposals for 4 (1) notification. *The land was again notified under Section 6 on 23.3.1978. The writ petitioner has not filed any objections immediately after notifications*." (emphasis supplied)

3.6. In spite of the above specific averments in the counter affidavit filed in support of W.P.No.3334 of 1996, the learned single Judge, by order dated 10.12.1999 dismissed the said writ petition on the ground that even though declaration under Section 6 of the Act was made on 23.3.1978 and award was passed on 28.3.1983, the petitioner has chosen to file a writ petition only on 18.3.1996 and therefore, the petition suffers from laches. Hence, the writ appeal.

4. Mr.M.Vaidyanathan, learned counsel for the petitioner (appellant), Mr.P.Rathinavel, learned Government Advocate for 1st respondent and Mr.Kasikumar, the learned counsel for 2nd respondent, in their arguments, reiterated the submissions made before the learned Single Judge.

5. We have given careful consideration to the submissions of both sides.

6.1. Concededly, the petitioner became the owner of the land with effect from 31.7.1974 based on the registered sale deed and was also issued patta by the revenue authorities on 16.11.1974. When the said relevant fact is not disputed by the respondents at any point of time in the counter affidavit either at the earlier stage of the writ petition, namely W.P.No.9484 of 1983, or in the counter affidavit filed in the present W.P.No.No.3334 of 1996, the stand taken by the respondents in their counter affidavit filed in the present writ petition, namely *the pattadhar once gathered could not be verified again and again for the purpose of confirming any change in the revenue register*, cannot be an excuse to dispense with the statutory notice to the petitioner, who is the pattadhar of the impugned land in the matter of land

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acquisition proceedings particularly, when necessary changes were made by appropriate revenue proceedings in the revenue records.

6.2. Even though the respondents fairly conceded that the title holder is entitled to file an objection against the acquisition after issue of notification under Section 4(1) of the Act, at the stage of enquiry under Section 5-A of the Act, since the petitioner had not been served any notice at the time of enquiry under Section 5-A of the Act, before passing the declaration under Section 6 of the Act, she cannot be found fault for not giving her objection either before the enquiry under Section 5-A of the Act, much less before issuing the declaration under Section 6 of the Act. Therefore, it is apparent on the face of the record that there is a clear violation to the statutory procedure contemplated under Section 5-A of the Act and Section 6 of the Act.

6.3. It is true that the Apex Court in *MUNICIPAL CORPORATION OF GREATER BOMBAY v. I.D.I. CO. PVT. LTD., (1996) 11 SCC 501*, held that where the acquisition proceedings are completed and the awards are passed, the Court should loath to quash the notification. But, the said ratio is not applicable to the facts of the case on hand as in *MUNICIPAL CORPORATION OF GREATER BOMBAY v. I.D.I. CO. PVT. LTD.*, referred supra, the challenge was made to the acquisition proceedings by the sitting tenants of the land, quite distinct to the case of the petitioner in the instant case, who became the owner of the land and was also issued patta by the competent revenue authorities prior to the notification under Section 4(1) of the Act.

6.4. Similarly, even though it is a well settled principle vide *STAR WIRE (INDIA) LTD v. STATE OF HARYANA, (1996) 11 SCC 698* that it is not either desirable or expedient to lay down a rule of universal application but the unreasonable delay denies to the petitioner the discretionary extraordinary remedy of mandamus, certiorari or any other relief, and the said view was reiterated in a catena of decisions, viz.,

(i) RABINDRANATH BOSE v. UNION OF INDIA, (1970) 1 SCC 84;

(ii) STATE OF MYSORE v. V.K.KANGAN, AIR 1975 SC 2190;

(iii) AFLATOON v. LT. GOVERNOR OF DELHI, (1975) 4 SCC 285;

(iv) TILOKCHAND MOTICHAND v. H.B.MUNSHI, AIR 1970 SC 898;

(v) STATE OF TAMIL NADU v. L.KRISHNAN, (1996) 1 SCC 250;

(vi) IMPROVEMENT TRUST v. JAGJIT SINGH, 1987 Supp. SCC 608;

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(vii) STATE OF PUNJAB v. HARI OM COOP. HOUSE BUILDING SOCIETY LTD., 1987 Supp. SCC 687;

(viii) MARKET COMMITTEE v. KRISHAN MURARI, (1996) 1 SCC 311; and

(ix) STATE OF HARYANA v. DEWAM SINGH, (1996) 7 SCC 394,

the case of the petitioner cannot be rejected on the ground of laches as the impugned acquisition was challenged by the father-in-law of the petitioner in the year 1983, in W.P.No.9484 of 1983 with a specific case that the petitioner is the owner of the land and had also been issued patta by revenue authorities, before issuing the notification under Section 4(1) of the Act. At no point of time, the fact that petitioner is the owner of the land and had also been issued patta by competent revenue authorities was considered, inasmuch as, the challenge made by the petitioner to the notification under Section 4(1) of the Act was rejected only on the ground of vagueness of the notification issued under Section 4(1) of the Act. The relevant portion of the order of the Apex Court in SLP (C) No.13725 of 1992, as reported in *State of Tamil Nadu v. L.Krishnan*, referred supra, reads as under:

> " Civil Appeals No.9822, 9814-18 and 9819, 9821 of 1995 (Arising out of S.L.P.(c)Nos.13725 of 1992)
>
> ...47. Leave granted.
>
> 48. These appeals are preferred against the judgment of the Madras High Court quashing the notifications issued under Section 4(1) of the Land Acquisition Act, 1894. In view of our judgment in Civil Appeals Nos. 1865-70 of 1992, these appeals are accordingly allowed. No costs."

6.5. In the contrary, the specific reason for not issuing the notification under Section 4(1) of the Act dated 19.2.1975 to the petitioner, even though the petitioner became the owner of the land on 31.7.1974 and patta was issued on 16.11.1974, was that the respondents cannot be expected to verify the revenue records again and again for the purpose of confirming any change in the Revenue Register, which, in our considered opinion, is not only unreasonable and arbitrary, but also perverse and goes to the root of the issue, rendering the entire acquisition proceedings a nullity for want of issue of notification to the petitioner for an enquiry under Section 5-A of the Act before issuing a declaration under Section 6 of the Act.

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7. In the result, we are unable to agree with the reasons of the learned single judge in dismissing the writ petition and on the other hand, we find force in the contention of the learned counsel for the petitioner that the entire acquisition proceedings vitiates for want of notice to the petitioner for an enquiry under Section 5-A of the Act before passing the declaration under Section 6 of the Act. The acquisition proceedings, therefore, fail and accordingly, they are set aside. This writ appeal is allowed as prayed for and the order of the learned Single Judge is set aside. No costs.

1.11.2004

sasi

Sd/- 16.11.2004
Asst.Registrar

Corrected Order to be issued.

Sd/- 11.3.2005
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary
State of Tamil Nadu
Department of Housing
and Urban Development
Fort St.George
Chennai - 9.

2. The Chairman
Tamilnadu Housing Board
Nandanam
Chennai - 600 035.

To be substituted to the Order already despatched on 23.11.2004.

1 cc to Mr.M.Vaidyanathan, Advocate, SR.47257)
1 cc to the Govt.Pleader, SR.47517
1 cc to Mr.D.Veerasekaran, Advocate, SR.47499)

ra (co)

bp

dv/11.3

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